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September 1, 2016

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OFFICE OF GENERAL
COUNSEL

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20436

Re: MUR 7099

Dear Mr. Jordan:

On behalf of Priorities USA Action and Greg Speed, Treasurer ("Respondents" or "Priorities"), we submit this letter in response to the complaint filed by the Campaign Legal Center, Democracy 21, and Paul S. Ryan ("Complainants") on July 6, 2016 ("the Complaint") alleging that Respondents may have violated the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission ("the Commission") regulations.

The Complaint alleges that Priorities may have violated the Act and Commission regulations by knowingly soliciting contributions from a federal contractor and then by failing to investigate and refund those contributions. However, the allegations made in the Complaint are meritless. Respondents did not knowingly solicit contributions from a federal contractor. Moreover, when questions about the contributions at issue in the Complaint arose, Respondents dutifully followed the requirements of Commission regulations by first investigating the contributions and then ultimately refunding them. Indeed, Respondents refunded the contributions at issue prior to the filing of the Complaint. Because the allegations made in the Complaint are without merit, and any potential legal issues raised by the Complaint were cured before the Complaint was even filed, the Commission should dismiss the Complaint and close the file.

FACTUAL BACKGROUND

Priorities is an independent expenditure-only political committee that engages in activity to support Hillary Clinton's 2016 presidential campaign. Because Priorities engages in independent activity only, it is permitted by law to accept unlimited political contributions from various different types of entities, including individuals, corporations, labor unions, and other political committees. Priorities does not, however, knowingly solicit or accept contributions from federal contractors.

Suffolk Construction Company, Inc. (hereinafter "Suffolk") contributed a total of \$200,000 to Priorities during the 2015-2016 election cycle. Suffolk contributed \$100,000 to Priorities on July 20, 2015. It made another \$100,000 contribution to Priorities on December 17, 2015

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(together with the July 20, 2015 contribution, "the Contributions"). Priorities properly reported both contributions to the Commission in its 2015 Year End report. When Priorities became aware of the possibility that Suffolk had been a federal contractor during the period in which it made the Contributions, Priorities initiated an investigation to determine the legality of the Contributions. Because Suffolk indicated to Priorities that it was not consistently a federal contractor during U.S. government fiscal years 2015 and 2016 when the Contributions were made,¹ the investigation centered on determining the precise dates during which Suffolk was a federal contractor as defined by Commission regulations.

Suffolk believed and informed Priorities that it was not a federal contractor during the period in which it made the Contributions because its sole federal contract ended in January 2015 and it did not re-enter federal contractor status again until it submitted a request for proposal in early 2016. After further review, Suffolk informed Priorities that it had discovered ambiguities regarding the dates of its federal contractor status. On June 29, 2016, legal counsel for Suffolk informed Priorities that there was a possibility that Suffolk may have been a federal contractor during the period in which it made the Contributions. The very next day, on June 30, 2016, Priorities refunded Suffolk \$200,000 for the Contributions. That refund was properly reported in Priorities' 2016 July Monthly report. Complainants filed the Complaint with the Commission on July 6, 2016, several days after Priorities had already completed its investigation and refunded the Contributions to Suffolk.

LEGAL ANALYSIS

A. Respondents did not knowingly solicit contributions from Suffolk.

Federal law and Commission regulations prohibit any person from *knowingly* soliciting a federal contractor to make a contribution to any political committee at any time between the earlier of the commencement of negotiations or when requests for proposals are sent out, and the later of (1) the completion of performance under the contract, or (2) the termination of negotiations for the contract.² In separating unknowing recipients from those with reason to know of active involvement in illegal contributions, the Commission has implicitly acknowledged the difficulties faced by committees in determining which contributions are legal.³ In keeping with its regulations, the Commission has consistently refused to initiate enforcement actions against

¹ The U.S. government's 2015 fiscal year ran from October 1, 2014 through September 30, 2015. The 2016 fiscal year began on October 1, 2015 and lasts through September 30, 2016.

² 52 U.S.C. § 30119; 11 C.F.R. §§ 115.1; 115.2.

³ See, e.g., FEC Adv. Op. 1984-52 (acknowledging that "there are situations where contributions are accepted without any knowledge, or reason to know, of the unlawful nature of the contributions at the time of receipt").

an unknowing recipient without some evidence that the recipient committee should have known of the illegal contribution, or that it failed to comply with Commission regulations.⁴ This is because in many cases, enforcement action against the recipients is inappropriate and, from the Commission's perspective, imprudent as a use of the Commission's resources.

For example, the Commission declined to find reason to believe against an unknowing recipient in MUR 3110. A complaint charged that a Colorado home building company pressured its subcontractors into making illegal corporate contributions on its behalf, for which the subcontractors were later reimbursed. News reports revealed that the campaign of Colorado U.S. Senator Hank Brown received several of the contributions. The General Counsel recommended that in the absence of any knowledge or participation by the Brown campaign in the reimbursement scheme, the Commission should take no action against the Brown campaign and the Commission ultimately followed the General Counsel's recommendation.

The Commission yet again declined to find reason to believe that an unknowing recipient violated the Act in MUR 2582. In this matter, Bob Dole's Senate campaign learned from a newspaper story that it may have received corporate contributions and contributions in the name of another. Relying on the Dole committee's assertion that it had no knowledge of the corporation's scheme of reimbursing its executives for contributions made to the Dole campaign, the Commission declined to find reason to believe that the Dole campaign had violated the Act.

In each of these matters, the Commission had before it an unknowing recipient of potentially illegal contributions and the Commission repeatedly declined to initiate enforcement against the unknowing recipient. This matter compels the same result. Priorities did not have reason to believe that Suffolk was a federal contractor at the time that Suffolk made the Contributions. Indeed, it was Priorities' understanding that Suffolk vacillated in and out of federal contractor status with some frequency.⁵

Given that Priorities did not have reason to believe that Suffolk was a federal contractor and it did not knowingly accept an illegal contribution from Suffolk, the Commission should follow its

⁴ See, e.g., MURs 3110 and 2582 as described herein. See also MUR 4090 (Commission declined to find reason to believe that recipient political committee violated the Act when it unknowingly received contributions from top officials of a corporation who had contrived to make an array of illegal contributions in the name of the corporation's foreign-national president).

⁵ As the Complaint points out, information about entities that are federal governmental contractors is publicly available on www.usaspending.gov. However, because Priorities is aware of reports detailing serious data quality problems with the information available on www.usaspending.gov, see, e.g., M. Gerli, "Tracking Federal Funds USAspending.gov and Other Data Sources," Congressional Research Service (May 13, 2015), available at <https://www.fas.org/spp/crs/misc/R44027.pdf>, it chose not to rely entirely on the information available there and relied instead on information obtained directly from Suffolk during Priorities' own investigation.

precedent and decline to find reason to believe that Priorities violated the Act or Commission regulations.

B. After investigation and prior to the filing of the Complaint, Respondents refunded the Contributions to Suffolk.

In addition to separating unknowing recipient committees from recipients that have knowledge of an illegal contribution, Commission regulations effectively separate committees which follow the proper procedures to determine the legality of contributions from committees which treat the law casually and invite enforcement action. Because Priorities falls into the former category in that it dutifully followed the requirements of the regulations in investigating the Contributions, the Commission should decline to find reason to believe Priorities violated the Act or Commission regulations.

When a contribution is first received, Commission regulations require a treasurer to examine it for evidence of illegality.⁶ If a campaign deposits a check that presents genuine questions as to whether it was made by a corporation, labor organization, foreign national or federal contractor, the treasurer must make "best efforts" to determine the contribution's legality, including at least one written or oral request for evidence of its legality.⁷ If a contribution raises no such questions at the time of its receipt, but is later revealed to have been illegal by new evidence unavailable to the treasurer at the time of receipt, the treasurer must refund the contribution within thirty days of having discovered the illegality.⁸

Priorities meticulously followed the requirements of the regulations set forth above. As stated previously, at the time that Suffolk made the Contributions, Priorities had no reason to believe that it should not accept them. Thus, Priorities deposited the Contributions and reported them to the Commission. Priorities later discovered that there were ambiguous facts regarding Suffolk's federal contractor status during the time in which it made the Contributions. Upon learning of the possibility that Suffolk was a federal contractor when it made the Contributions, Priorities initiated an investigation to determine the precise beginning and end dates of Suffolk's federal contractor status during the 2015 and 2016 fiscal years. Suffolk mistakenly thought it was not a federal contractor at the time that it made the Contributions and represented that fact to Priorities. However, on June 29, 2016, upon further investigation, Suffolk informed Priorities that it had discovered new information indicating that it may have been a federal contractor during the period in which it made the Contributions. On June 30, 2016, within 24 hours of when Suffolk

⁶ 11 C.F.R. § 103.3(b).

⁷ *Id.* § 103.3(b)(1).

⁸ *Id.* § 103.3(b)(2).

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informed Priorities of this new information, Priorities refunded the Contributions. Importantly, the Complaint in this matter was not filed until July 6, 2016. By that time, the issues raised in the Complaint were moot because Priorities had already complied with its duty to investigate the Contributions in accordance with 11 C.F.R. § 103.3(b)(2) and it had already chosen to refund the Contributions.

CONCLUSION

The Commission should reject the Complaint's request for an investigation and immediately dismiss this matter. The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a precondition to opening an investigation into the alleged violation.⁹ Because Respondents did not knowingly solicit a contribution from a federal contractor and instead followed all of the proper procedures upon learning that it may have inadvertently accepted contributions from a federal contractor, the Commission should not find reason to believe that a violation of the Act or Commission regulations has occurred, and it should immediately dismiss this matter.

Very truly yours,



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⁹ 52 U.S.C. § 30109(a)(2).

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